

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail
Priority Mail Contract 149

Docket No. MC2016-8

Competitive Product Prices
Priority Mail Contract 149 (MC2016-8)
Negotiated Service Agreement

Docket No. CP2016-10

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE REQUEST TO ADD
PRIORITY MAIL CONTRACT 149 TO
COMPETITIVE PRODUCT LIST

(October 30, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2780.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Contract 149 to the competitive product list.²

The Postal Service's Request includes a Statement of Supporting Justification (Statement), a certification of compliance with 39 U.S.C. § 3633(a), a public (redacted) version of Governor's Decision No. 11-6 and related analysis, a public version of Priority Mail shipping services Contract 149, and proposed changes to the Mail Classification Schedule (MCS) competitive product list with the additions underlined. The Postal Service also filed under seal an unredacted version of Governor's Decision No. 11-6,

¹ Order No. 2780, Notice and Order Concerning the Addition of Priority Mail Contract 149 to the Competitive Product List, October 23, 2015 (Notice).

² Request of the United States Postal Service to Add Priority Mail Contract 149 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 22, 2015 (Request).

Contract 149, and a supporting financial model estimating the contract value during the first year.

The Postal Service states that Contract 149 is a competitive product featuring prices “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the classification and prices applicable to Contract 149 are authorized by Governors’ Decision No. 11-6.³ The Postal Service further asserts that the Statement provides support for adding Contract 149 to the competitive product list and the compliance of Contract 149 with 39 U.S.C. § 3633(a). Request at 2; *Id.*, Attachment D.

The effective date for Contract 149 is one business day following the day on which the Commission issues all necessary regulatory approvals. Request, Attachment B at 3 (Article II). Contract 149 will expire 3 years from the effective date unless either party terminates the contract on 30 days’ prior written notification, or other specific events. *Id.* (Article III).

COMMENTS

The Public Representative has reviewed the Postal Service’s Request, the Statement, as well as Priority Mail Contract 149 and the financial model filed under seal with the Request. Based upon that review, the Public Representative concludes that Contract 149 should be classified as a competitive product and added to the competitive product list. In addition, it appears that Contract 149 should generate sufficient revenues to cover costs during the first year and thereby satisfy 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Contract 149 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of

³ *Id.*, Attachment A, consisting of Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service’s Statement makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D at 2. These assertions appear reasonable. Based upon the Statement, the Public Representative concludes that the Postal Service’s Request to add Contract 149 to the competitive product list is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service’s competitive prices must ensure that each competitive product will cover its attributable costs; ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service; and, not result in the subsidization of competitive products by market dominant products. Based upon a review of the financial model, the negotiated prices for Contract 149 should generate sufficient revenues to cover costs during the first year of the contract and therefore meet the requirements of 39 U.S.C. § 3633(a).

As indicated above, Contract 149 is expected to remain in effect for a period of three years. The contract includes a mechanism for the adjustment of contract prices during this 3-year period. Adjustments to contract prices are linked to changes in prices of general applicability for Priority Mail Commercial Plus. If the Postal Service does not seek a price adjustment, however, there will be no change in the contract prices. Should the Postal Service propose a decrease in generally applicable prices for Commercial Plus, contract prices will decrease. That said, the possibility of a decrease in generally applicable Commercial Plus prices seems remote.⁴ For this reason, the price adjustment mechanism should improve the likelihood that Contract 149 meets the requirements of 39 U.S.C. § 3633(a) over its lifetime.

⁴ See Docket No. 2016-9, Notice of the United States Postal Service of Changes in Rates of General Applicability for Competitive Products Established in governors’ Decision No. 15-1, October 16, 2015. Prices for Priority Mail Commercial Plus are proposed to increase by 13.3 percent.

Moreover, this concern is mitigated by the fact that the Postal Service must file revenue and cost data for Contract 149 in future Annual Compliance Reports. This data will permit the Commission to annually review the financial results for Priority Mail Contract 149 in future Annual Compliance Determination (ACD) reports for compliance with 39 U.S.C. § 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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